

Remarks

In view of the above amendments and the following remarks, reconsideration and further examination are respectfully requested.

Claims 16-29 and 31 have been canceled without prejudice. Claims 1, 30 and 32 have been amended, and claims 43-65 have been added. As a result, claims 1-15, 30, and 32-65 are currently pending. It is believed that claims 1, 2, 9-13, 15, 30, 32, 33, 36-38, 42-47, and 55-63 read on the elected species. Claims 3-8, 14, 15, 34, 35, 39-41, 48-54, 64 and 65 have been withdrawn from consideration. Consequently, claims 1, 2, 9-13, 15, 30, 32, 33, 36-38, 42-47, and 55-63 are currently pending and under consideration.

Initially, the applicants wish to thank the Examiner for indicating that previous dependent claim 12 contained allowable subject matter on page 12 of the Office Action. In that regard, the features of dependent claim 12 have been rewritten into independent form as claim new independent claim 43. Consequently, it is believed that independent claim 43 is in condition for allowance.

On pages 4 and 6 of the Office Action, independent claim 1 was “rejected under 35 U.S.C. 102(b,e) as being anticipated by Grosse et al (WO 97/23174).” It is believed that independent claim 1, as currently amended, is not anticipated by Grosse et al. For example, Grosse et al. fails to disclose or suggest “wherein at least one of said opposite end pieces of said second load bearing member contacts said truncated surface of said first load bearing member to nest the first and second load bearing members together” as is recited in claim 1. As can be seen in FIGS. 4 and 5, the implants 1 in Grosse et al. do not contact one another, but rather, are spaced apart from one another. Thus, Grosse et al. fails to disclose an end piece of one load bearing member contacting a truncated surface of another load bearing member to nest the two members together. For this and other reasons, it is believed that independent claim 1 and its dependent claims are allowable over the references of record.

On pages 4 and 6 of the Office Action, independent claim 30 was “rejected under 35 U.S.C. 102(b,e) as being anticipated by Grosse et al (WO 97/23174).” It is believed that independent claim 30, as currently amended, is not anticipated by Grosse et al. For example, Grosse et al. fails to disclose or suggest “placing said implant system into the intervertebral space after said preparing step, wherein said placing includes engaging one of the opposite end pieces of said second load bearing member with said truncated surface of said second load bearing member to nest said first load bearing member with said second load bearing member.” It should be readily recognized from FIGS. 4 and 5 that the implants 1 in Grosse et al. are not nested in a manner in which an end piece of one of the implants 1 engages a truncated surface of the other implant 1. Rather, the implants 1 in Grosse et al. are spaced apart from one another. For this and other reasons, it is believed that independent claim 30 is allowable over the references of record.

On pages 4 and 6 of the Office Action, independent claim 32 was “rejected under 35 U.S.C. 102(b,e) as being anticipated by Grosse et al (WO 97/23174).” It is believed that independent claim 30, as currently amended, is not anticipated by Grosse et al. For example, Grosse et al. fails to disclose or suggest “said first end piece of said second fusion device being received in said cutout region of said first end piece of said first fusion device to nest said first fusion device with said second fusion device” as recited in claim 32. Looking at FIG. 4 of Grosse et al., the implants 1 are spaced apart from one another, and do not have nested components that are received in one another. For this and other reasons, it is believed that independent claim 32 and its dependent claims are allowable over the references of record.

New independent claim 44 has been added provide additional coverage, and it is believed that claim 44 is allowable over the references of record. For instance, the references of record, like Grosse et al., fail to disclose or suggest “at least one of the opposing end pieces of the first fusion device defines a cutout region that is concave in shape and at least one of the opposing end pieces of the second fusion device is received in the cutout region to nest the second fusion device with the first fusion

device” as recited in claim 44. As can be seen in FIG. 4, the implant in Grosse et al. does not have a cutout region with a concave shape. Further, no portions of the implants 1 in Grosse et al. are received in the other one to nest the implants 1 together. For this and other reasons, it is believed that independent claim 44 and its dependent claims are allowable over the references of record.

New independent claim 57 has been added provide additional coverage, and it is believed that claim 57 is allowable over the references of record. For instance, the references of record, like Grosse et al., fail to disclose or suggest “the first end piece of the first load bearing member has a truncated surface, and the first end piece of the second load bearing member contacts the truncated surface of the first load bearing member” as recited in claim 57. It should be recognized that the implants in Grosse et al. do not contact one another in the manner as recited, and further, in FIG. 4, do not even contact one another. For this and other reasons, it should be appreciated that independent claim 57 and its dependent claims are allowable over the references of record.

New independent claim 61 has been added provide additional coverage, and it is believed that claim 61 is allowable over the references of record. For instance, the references of record, like Grosse et al., fail to disclose or suggest “nesting the second fusion device with the first fusion device within the surgical window by positioning at least a portion of one the end pieces of the second fusion device in the cutout region of the first fusion device” as recited in claim 61. From FIGS. 4 and 5, it should be appreciated that the implants 1 in Grosse et al. are not nested in the manner as recited in claim 61 because no portion of either implant 1 is received in the other. For this and other reasons, it should be appreciated that independent claim 61 and its dependent claims are allowable over the references of record.

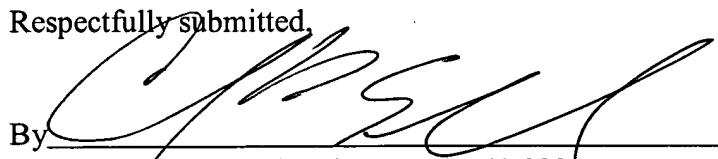
As a housekeeping matter, it should be noted that an Information Disclosure Statement (IDS) has been submitted with this response in order to cite the references mentioned on page 2 of the Office Action. Copies of the cited references have also

been enclosed. The Applicants kindly request that the Examiner returns an initialed copy of the IDS form with the next communication from the Patent Office.

In view of the above amendments and remarks, it is submitted that the present application is now in condition for allowance, and the Examiner is requested to pass the case to issue. If the Examiner should have any comments or suggestions to help speed the prosecution of this application, the Examiner is requested to contact the applicants' undersigned representative by telephone.

Respectfully submitted,

By



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